

NFL

CONCUSSION SETTLEMENT

IN RE: NATIONAL FOOTBALL LEAGUE PLAYERS' CONCUSSION INJURY LITIGATION
No. 2:12-md-02323 (E.D. Pa.)

RULES GOVERNING REGISTRATION APPEALS

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RULES GOVERNING APPEALS OF REGISTRATION DETERMINATIONS

TITLE I: GENERAL

Rule 1. The Purpose of These Rules. These Rules govern appeals under Section 4.3(a)(iv) of the Settlement Agreement by a Settlement Class Member, Co-Lead Class Counsel, or the NFL Parties of the Claims Administrator's Registration challenge determinations.

Rule 2. Adoption of These Rules. The Special Masters have adopted these Rules in the exercise of their duties pursuant their appointment by the Court in its July 13, 2016 Order (Document 6871). The Special Masters may amend these Rules at any time *sua sponte* or after request by Co-Lead Class Counsel, the NFL Parties or the Claims Administrator and such input from Co-Lead Class Counsel, the NFL Parties and the Claims Administrator as the Special Masters deem appropriate.

Rule 3. Definitions Used in These Rules. All capitalized terms used in these Rules will have the meanings given to them in the Settlement Agreement. In addition:

- (a) "Appellant" means the party noting a Registration Appeal from a Notice of Registration Challenge Determination. This can be a Settlement Class Member or the NFL Parties. Co-Lead Class Counsel cannot appeal from any Notice of Registration Challenge Determination. These Rules refer to making or bringing a Registration Appeal as "noting" an appeal.
- (b) "Appellee" means a Settlement Class Member or the NFL Parties when responding to a Registration Appeal and not acting as the Appellant noting the appeal.
- (c) "Court Portal" means the online system created by the Claims Administrator for the exchange of materials and information between the Court and the Claims Administrator relating to the Settlement Program.
- (d) "Notice of Registration Challenge Determination" means the notice issued by the Claims Administrator announcing its decision on (1) a challenge by a Settlement Class Member under Section 4.3(a)(ii) of the Settlement Agreement to an adverse Notice of Registration Determination issued by the Claims Administrator; or (2) a challenge by the NFL Parties under Section 4.3(a)(iii) of the Settlement Agreement to a favorable Notice of Registration Determination issued by the Claims Administrator.
- (e) "Objection to Special Master Registration Decision" means an objection to a conclusion of law made by the Special Master in a decision on a Registration Appeal, as described in Rule 27.
- (f) "Party to the Registration Appeal" or "Parties to the Registration Appeal" means any one of or both the Settlement Class Member involved in the Registration Appeal and the NFL Parties.

- (g) “Portal” means the online system created by the Claims Administrator for the exchange of materials and information between Settlement Class Members and the Claims Administrator, or among Co-Lead Class Counsel, the NFL Parties and the Claims Administrator, in the Settlement Program.
- (h) “Record on Registration Appeal” means what may be considered by the Special Master when deciding a Registration Appeal, as described in Rule 18.
- (i) “Registration Appeal” means an appeal from a Notice of Registration Challenge Determination issued by the Claims Administrator. These Rules refer to making or bringing a Registration Appeal as “noting” an Appeal.
- (j) “Registration Appeal Alert” is the notice from the Claims Administrator to alert parties that there has been a Registration Appeal, as described in Rule 12.
- (k) “Registration Appeal Form” is the form used to note a Registration Appeal, as described in Rule 10.
- (l) “Response of Appellee” means what an Appellee submits to set out its position on a Registration Appeal, as described in Rule 13.
- (m) “Settlement Agreement” means the Amended Class Action Settlement Agreement dated as of June 25, 2014, as amended on February 13, 2015 (the “Settlement Agreement”) and approved in the Court’s May 8, 2015 Amended Final Approval Order and Judgment (Document 6534).
- (n) “Settlement Class Member” means a Retired NFL Football Player (or the Representative Claimant of a deceased or incompetent Retired NFL Football Player), or a Derivative Claimant, which is how this term is defined in the Settlement Agreement. In addition, for purposes of these Rules the terms “Settlement Class Member,” “Retired NFL Football Player” and “Derivative Claimant” also mean a purported Settlement Class Member, Retired NFL Football Player or Derivative Claimant attempting to register in the Settlement Program under Article IV of the Settlement Agreement but who has not been found to satisfy those Settlement Agreement definitions.
- (o) “Settlement Program” means the program for benefits for Settlement Class Members established under the Settlement Agreement.
- (p) “Special Master” and “Special Masters” mean any one or both of the two Special Masters appointed by the Court in its July 13, 2016 Order (Document 6871) or appointed in any subsequent Order of the Court.

- (q) “Special Master Portal” means the online system created by the Claims Administrator for the exchange of materials and information between a Special Master and the Claims Administrator relating to the Settlement Program.
- (r) “Summary of Registration Review” is what the Claims Administrator will submit in a Registration Appeal, if directed to do so by the Special Master to explain what it did on the registration being appealed, as described in Rule 14.

Rule 4. Registration Appeals Will Be Handled by the Special Masters. The Court has referred to the Special Masters all Registration Appeals, to be determined in accordance with these Rules.

Rule 5. How Things are Submitted and Served Under These Rules.

- (a) General Rule: All submissions, notices and decisions under these Rules will be made and served through a Portal or, for anyone not using a Portal, through hard copy by mail or delivery. If a party is represented by a lawyer, service will be made on that lawyer only.
- (b) Party Using a Portal: When submitting any item under these Rules, anyone who uses a Portal will upload the item to the Portal, which will cause it to be served on all other Parties to the Registration Appeal who use a Portal, and the uploader will mail or deliver the item to any other Party to the Registration Appeal who does not use a Portal. At the beginning of a Registration Appeal, the Claims Administrator will identify to the Parties to the Registration Appeal anyone involved who does not use a Portal.
- (c) Party Not Using a Portal: When submitting any item under these Rules, anyone who does not use a Portal will mail or deliver the item to the Claims Administrator, which will upload the item to the Portals of other Parties to the Registration Appeal, and the uploader will mail or deliver it to any other Party to the Appeal who does not use a Portal. To safeguard their confidentiality, materials may not be submitted by email.
- (d) Special Masters: The Special Masters will access all Registration Appeals and enter orders and decisions on them using the Special Master Portal.
- (e) No Filings on the Court’s Docket: The Court will access all Objections to Special Master Registration Decisions and enter rulings on them using the Court Portal. Proceedings under these Rules will not be filed on the Court’s docket. No submissions under these Rules may be filed on the Court’s docket.
- (f) References in these Rules to a page limit on a submission mean double-spaced pages without counting exhibits. Single-spaced submissions cannot exceed one half the number of permitted double-spaced pages. While handwritten submissions are discouraged, the page limit means that number of handwritten pages.

Rule 6. How to Count Time Periods and the Date Something is Submitted in an Appeal and Extensions of Time.

- (a) How to Count Time Periods: Any time period set by these Rules will be computed as follows, which is based on Rule 6 of the Federal Rules of Civil Procedure:
- (1) Do not count the day that starts the running of any period of time. The first day of the period is the day after this trigger day.
 - (2) Count every day, including Saturdays, Sundays and legal holidays.
 - (3) Count the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
 - (4) Legal holidays are New Year's Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day declared a holiday by the President of the United States or the United States Congress.
 - (5) An additional three days will be added to any time period specified by these Rules for an action or submission where the acting or responding party was served by mail with the Notice or submission requiring action or response rather than by service on a Portal.
- (b) How to Mark the Date Something is Submitted: A document or any material submitted or served under these Rules will be considered submitted on these dates:
- (1) Online: The date uploaded as of the local time of the sender.
 - (2) By Mail: The postmark date showing the date it was mailed. If there is no postmark date on the item or the date printed is illegible, the date of receipt by the party to whom it was mailed controls.
 - (3) Overnight Delivery: The date the sender placed the item in the hands of the overnight carrier.
 - (4) Hand Delivery by Courier: The date the item is received by the party to whom it is delivered.
- (c) Extensions of Time: Any deadline imposed by these Rules may be extended (1) by the Special Master in his or her discretion or (2) by the agreement of the Parties to the Appeal, if approved by the Special Master.

TITLE II: APPEAL PROCESS

Rule 7. Who May Appeal and What May Be Appealed on Registration Challenge Determinations.

- (a) A Retired NFL Football Player (or Representative Claimant) may appeal on the issues whether (1) the Retired NFL Football Player satisfies the definition of that term in Section 2.1(f) of the Settlement Agreement to have the status of a Retired NFL

Football Player; (2) the Retired NFL Football Player had at least half of an Eligible Season under Section 2.1(kk) of the Settlement Agreement or (3) whether the Retired NFL Football Player (or Representative Claimant) properly and timely registered under Article IV of the Settlement Agreement. A Retired NFL Football Player (or Representative Claimant) may not appeal a Notice of Registration Challenge Determination issued to a Derivative Claimant.

- (b) A Derivative Claimant may appeal on the issues whether (1) he or she identified a relationship that would give him or her a right under applicable state law to sue independently or derivatively or (2) he or she properly and timely registered under Article IV of the Settlement Agreement. A Derivative Claimant may not appeal a Notice of Registration Challenge Determination issued to the Retired NFL Football Player (or Representative Claimant) with whom the Derivative Claimant is associated.
- (c) The NFL Parties may appeal a Notice of Registration Challenge Determination on the issue of whether the Retired NFL Football Player satisfies the definition of that term in Section 2.1(ffff) of the Settlement Agreement to have the status of a Retired NFL Football Player.

Rule 8. No Other Appeals. Unless allowed in other Rules approved by the Special Masters or in orders by the Court, no other registration determinations by the Claims Administrator are appealable.

Rule 9. The Deadline to Note an Appeal. Any party wishing to appeal a Notice of Registration Challenge Determination must note a Registration Appeal within 60 days after the date of the Notice of Registration Challenge Determination.

Rule 10. How an Appellant Notes an Appeal.

- (a) To note a Registration Appeal, an Appellant must use a Registration Appeal Form on a Portal or by mail or delivery to the Claims Administrator. The Registration Appeal Form is available on each Portal and is included in a Notice of Registration Challenge Determination sent by mail to a Settlement Class Member.
- (b) The Appellant must indicate in the Registration Appeal Form why the Appellant feels the Notice of Registration Challenge Determination was wrong, which will be the issue(s) being appealed that the Appellant wishes the Special Master to decide on the Appeal, provided that the issue is appealable under Rule 7.
- (c) The Appellant may submit with the Registration Appeal Form a statement of up to 10 pages setting forth the arguments of the Appellant on the issue(s) appealed and citations to any evidence submitted to the Claims Administrator the Appellant contends supports the Registration Appeal. This statement will become part of the Appellant's Registration Appeal Form. While exhibits to this submission are permitted, the Appellant may not refer to or offer any evidence that was not before the Claims Administrator.

Rule 11. No Appeal Fee. There is no fee for a Registration Appeal.

Rule 12. Registration Appeal Alert from the Claims Administrator. If the Claims Administrator receives a timely Registration Appeal Form, the Claims Administrator will provide a Registration Appeal Alert to the other Party to the Appeal through a Portal or by mail to a Party to the Appeal who does not use a Portal. The Registration Appeal Alert will include the Appeal Form (and any statement submitted with the Appeal Form) of the Appellant.

Rule 13. Response of Appellee. The Appellee may submit a Response of Appellee of up to 10 pages setting out its position and arguments on the Registration Appeal, within 10 days after the date of the Registration Appeal Alert. The lack of opposition to a Registration Appeal will not be considered an admission regarding the merits of the Registration Appeal. While exhibits to this submission are permitted, an Appellee may not refer to or offer any evidence that was not before the Claims Administrator.

Rule 14. Summary of Registration Review by the Claims Administrator. The Special Master may at any time direct the Claims Administrator to submit a Summary of Registration Review to explain what occurred leading to the Notice of Registration Challenge Determination being appealed.

Rule 15. Additional Material Required by the Special Master. The Special Master may at any time direct any Party to the Registration Appeal to submit additional memoranda or material if the Special Master determines that such additional submissions would aid in the consideration of the Registration Appeal. No other memoranda or materials may be submitted unless permitted or directed by the Special Master.

Rule 16. No Discovery. No requests for production, interrogatories, requests for admission, depositions or other discovery is allowed by or on behalf of any Party to a Registration Appeal.

Rule 17. Oral Argument. Within his or her sole discretion, the Special Master may require oral argument, or permit such argument if requested by a Party to the Appeal, in such time and place and in such manner as the Special Master directs. There will be no testimony, cross-examination or other evidentiary hearing on an Appeal. Any oral argument may be preserved in an audio recording, but will not be transcribed by a court reporter unless directed by the Special Master. No new evidence not in the Record on Registration Appeal may be introduced or referred to in any oral argument.

Rule 18. The Record on a Registration Appeal. The Record on Registration Appeal consists of:

- (a) The Settlement Agreement;
- (b) The Registration Form and any materials submitted by the Settlement Class Member to the Claims Administrator attempting to register and any actions by the Claims Administrator on the Settlement Class Member's registration;

- (c) The Appellant's Registration Appeal Form (and any statement and exhibits);
- (d) Response of the Appellee (and any exhibits);
- (e) Summary of Registration Review from the Claims Administrator;
- (f) Oral argument permitted by the Special Master; and
- (g) Any other exhibits, memoranda and submissions directed or permitted by the Special Master.

Rule 19. Remand to the Claims Administrator.

- (a) If the Special Master determines it necessary, he or she may remand a Registration Appeal at any time to the Claims Administrator for further processing.
- (b) The Parties to the Registration Appeal may agree to remand a Registration Appeal at any time to the Claims Administrator for further processing.
- (c) If a Registration Appeal is remanded to the Claims Administrator, the Registration Appeal will terminate. The Claims Administrator will resume processing the attempted registration and issue appropriate Notices resulting from such processing, which may be subject to a new Registration Appeal if the processing results in a Registration Challenge Determination Notice.

Rule 20. No Cross-Appeals. Because a Settlement Class Member and the NFL Parties have independent rights to submit an Appeal, no Party to an Appeal may cross-appeal in a Response of Appellee or any other submission on any issue not raised by that party in an independent Registration Appeal timely submitted by that party.

Rule 21. Standard of Review on a Registration Appeal. The Special Master will decide an issue on a Registration Appeal based upon a showing by the Appellant of clear and convincing evidence. Under this standard, the Appellant must convince the Special Master that there is a high degree of probability that the determination of the Claims Administrator being appealed was wrong.

Rule 22. Multiple Registration Appeals Presenting Common Issues and Preclusive Effect of Decisions. The Special Master has discretion to consolidate for purposes of briefing and/or decision the proceedings on any Registration Appeals that involve common issues of law and/or fact, as well as where the Special Master determines that a collective resolution of an issue will best serve the efficient and equitable administration of the Settlement Agreement. In any Registration Appeal, including any instance in which the Special Master has consolidated matters involving common questions of law and/or fact or issues requiring collective resolution, the Special Master may direct that the findings and rulings on such questions and issues have preclusive effect and may not be re-litigated in any other Registration Appeal.

Rule 23. Decision by the Special Master. The Special Master will issue to the Claims Administrator a decision on a Registration Appeal within 60 days after the later of the date of (a) the last submission by the Parties to the Appeal or the Claims Administrator; (b) any oral argument; or (c) the date of submission of any additional materials permitted or directed by the Special Master, unless the Special Master determines that additional time is required for consideration of the Registration Appeal. In such decision, the Special Master may affirm or reverse the determination of the Claims Administrator and direct such other and further relief as the Special Master deems appropriate, and will make such explanation of the grounds of the decision as the Special Master deems necessary under the circumstances.

Rule 24. Notice of Special Master Decision on a Registration Appeal. Within five days after the date of a decision by the Special Master on a Registration Appeal, the Claims Administrator will serve the decision on the Parties to the Registration Appeal by Portal or mail.

Rule 25. Withdrawal of Appeal. An Appellant may withdraw a Registration Appeal of right by notice to the Claims Administrator at any time until 20 days after the date of the last submission on the Registration Appeal permitted by these Rules or directed by the Special Master. After that time, an Appellant may withdraw an Appeal only as permitted by the Special Master. If a Registration Appeal is withdrawn, the determination of the Claims Administrator subject to the Registration Appeal will be considered final as of the date of the withdrawal.

Rule 26. Finality of the Special Master's Decision. The Special Master's decision on a Registration Appeal is final and binding on the Parties to the Registration Appeal and the Claims Administrator and is not subject to appeal or review by the Court, except that pursuant to Fed. R. Civ. P. 53(f)(4) and the Court's July 13, 2016 Order appointing the Special Masters, the Court will review *de novo* (that is, anew) any objection to the Special Master's conclusions of law. The Special Master will identify in each decision any issue the Special Master determines to be a conclusion of law to which a Party to the Registration Appeal may object and have reviewed by the Court.

Rule 27. Objections to a Conclusion of Law in a Decision by the Special Master.

- (a) A Party to a Registration Appeal wishing to object to a conclusion of law by the Special Master will present such objection in an Objection to Special Master Decision of up to 10 pages submitted to the Claims Administrator on a Portal or in hard copy within 20 days after the date of notice of the Special Master's decision under Rule 24, setting forth the arguments in support of the Objection.
- (b) The other Party to the Registration Appeal may respond with up to 10 pages to the Objection to Special Master Decision on a Portal or in hard copy within 20 days after the date of the Objection, setting out the arguments in response to the Objection.
- (c) Exhibits to these submissions are permitted, but no party may refer to or attach any evidence that was not in the Record on Registration Appeal before the Special Master. When submitting an Objection or response to an Objection, the submitting party must mail or deliver the submission to any Party to an Appeal not using a Portal.

- (d) The Court will review *de novo* (that is, anew) an Objection to Special Master Decision and may affirm, modify or reverse the Special Master's conclusion and order such other and further relief as the Court deems appropriate. The Claims Administrator will serve the Court's decision on the Parties to the Registration Appeal. The Court's decision is final and not subject to further review by appeal or otherwise.

Rule 28. Publishing the Decisions by the Special Master and Court on Registration Appeals. The Special Master and the Court will designate in a decision on a Registration Appeal whether the decision is to be published or unpublished. The Claims Administrator will post in an aggregated set de-identified copies of each published decision on the official website of the Settlement Program and on the Portal of each Portal user. In addition to their preclusive effect under Rule 22, published decisions of the Special Master and the Court will have precedential value in the Settlement Program on the issues and principles determined in the decision, which means they will serve as guidance for the consideration of the same or similar issues and principles in subsequent Registration Appeals.